

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

07/22/2002

CLERK OF THE COURT  
FORM V000A

HONORABLE MICHAEL D. JONES

P. M. Espinoza  
Deputy

CV 2002-006096

FILED: \_\_\_\_\_

NATURALLY WOMEN FITNESS CENTERS

ESTHER B SIMON

v.

KELLY SHACKLEFORD, et al.

KELLY SHACKLEFORD  
6804 W PALO VERDE AVE  
PEORIA AZ 85345-0000

KEVIN SHACKLEFORD  
6804 W PALO VERDE AVE  
PEORIA AZ 85345-0000  
PEORIA JUSTICE COURT  
REMAND DESK CV-CCC

MINUTE ENTRY

This Court has jurisdiction of this civil appeal pursuant to the Arizona Constitution Article VI, Section 16, and A.R.S. Section 12-124(A).

This matter has been under advisement since June 6, 2002, and the Court has considered and reviewed the record of the proceedings from the Peoria Justice Court, and the Memorandum submitted by Appellant. Both Appellees were given the opportunity to submit memoranda that were due June 6, 2002 and they have chosen not to do so.

This case originated when the Appellant/Plaintiff, Naturally Women Fitness Centers, filed a complaint in the Peoria Justice Court in January of 1998 for amounts due to Appellants

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pursuant to a contract signed by Appellees, Kevin and Kelly Schackleford. A Default Judgment was entered by the Peoria Justice Court on September 9, 1999.

Appellees, Kelly and Kevin Schackleford, filed a Motion to Set Aside the Default Judgment 2-1/2 years later on February 14, 2002. On February 15, 2002, the trial court returned Appellees' Motion to Set Aside Default Judgment because Appellees did not pay the \$24.00 appearance fee. The minute entry was sent only to Appellees. Further, this minute entry failed to note that Appellees had not endorsed Appellants on the Motion to Set Aside Default Judgments, nor had Appellees certified that they would mail a copy to Appellants of their motion. Unfortunately, the Peoria Justice Court minute entry of February 15, 2002 omits to mention these important deficiencies. Without explanation, the Honorable Paul Crum, Judge Pro Tem of the Peoria Justice Court, granted Appellees' Motion to Set Aside the Default Judgment on March 11, 2002. Copies of this minute entry ruling were provided to both parties.

Generally, an appellate court will not disturb a trial judge's ruling on a Motion for Relief from Judgment pursuant to Rule 60(c)<sup>1</sup> in the absence of an abuse of discretion. In this case, it is clear that Appellees failed to timely file a Motion to Set Aside the Default Judgment. Appellees' Motion to Set Aside was filed 2-1/2 years after the default judgment and contained no explanation why the motion was not filed within a reasonable period of time. Upon reviewing the trial court's file, it is clear that Appellees' Motion to Set Aside the Default Judgment was filed in response to an Application for a Writ of Garnishment filed by Appellant. It would appear then that Appellees Motion to Set Aside the Default Judgment would have been more appropriately and technically captioned a Motion to Quash the Writ of Garnishment based upon a prior Satisfaction of the Default Judgment previously issued by the court. Those are issues which should be directed to the discretion of the trial court after this matter is remanded.

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<sup>1</sup> Arizona Rules of Civil Procedure.  
Docket Code 019

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All parties in all of Arizona courts are entitled to the right of due process and a fair trial as guaranteed by the Fourteenth Amendment to the United States Constitution and Article II, Section 4 of the Arizona Constitution. This right includes the right to receive notice of all matters and motions affecting the rights of the parties which are to be considered by the Court. Upon review of the Peoria Justice Court file, it is clear that the trial judge erred in ruling on Appellees' Motion to Set Aside Default Judgment when nothing in the court's file, including the motion itself, reflected that Appellants had been provided with a copy of that motion and given the opportunity to respond. This result seems to contradict principles of fundamental fairness and due process. Where a party has been denied an essential component of due process, such a denial constitutes fundamental error.<sup>2</sup>

IT IS THEREFORE ORDERED reversing the order of the Peoria Justice Court of March 11, 2002 wherein the Peoria Justice Court granted Appellees' Motion to Set Aside Default the Judgment of September 9, 1999.

IT IS ORDERED vacating that order and remanding this matter back to the Peoria Justice Court with instructions to deny Appellees' Motion to Set Aside Default until such time as Appellees comply fully with the requirements of Rule 60(c), Arizona Rules of Civil Procedure.

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<sup>2</sup> State v. Flowers, 159 Ariz. 469, 768 P.2d 201 (App. 1989).  
Docket Code 019